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AUTHOR Masel-Walters, Lynne
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ABSTRACT

In spite of the negative aspects of her determination to be the sole motivator, controller, and martyr for the birth control movement, Margaret Sanger was a positive social force in testing and denouncing the Comstock law. The law, named for Anthony Comstock, a postal inspector who had lobbied Congress to forbid the distribution of obscene materials throughout the United States, equated birth control and sex education with obscenity. After Comstock declared two issues of a socialist newspaper unmailable because Sanger had mentioned the names of venereal diseases in her articles on sex, Sanger resorted to publishing her own newspaper, "The Woman Rebel." The first issue and six of the next eight issues were suppressed for their controversial content and Sanger was indicted on nine counts of law violation, despite the fact that the articles contained only general discussions of contraception. After Sanger fled to Europe, alleging that the courts were treating her unfairly, her estranged husband was arrested for passing on one copy of her birth control pamphlet. Resentful of his publicity, Sanger returned seeking a court trial in order to achieve publicity for her cause. When the government decided not to prosecute her, she achieved publicity by forming an organization to promote contraception. (MAI)

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HISTORY

BIRTH CONTROL AS OBSCENITY: MARGARET SANGER AND THE WOMAN REBEL

By

Lynne Masel-Walters
Assistant Professor

School of Communication
University of Alabama

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Birth Control as Obscenity: Margaret Sanger and The Woman Rebel*

When Margaret Sanger died in 1966, her eulogists called her a visionary, a pioneer and a monumental figure of the first half of the twentieth century.

These were not just the usual maudlin overgeneralizations of funeral orators. Sanger was a force in social history. Without her devotion to the contraceptive cause, her willingness to test the laws that impeded it and her understanding of the value of publicity, birth control material would not be as freely available as it is today.

This is not to say that Sanger's contributions to the movement were wholly positive. Sanger's devotion was to "her" cause, and many of her more ill-advised endeavors were attempts to maintain control of the birth control movement. In testing the laws, she frequently chose the wrong grounds, giving up the less dramatic but more constitutionally sound argument of free speech and press in favor of evidence on the social and medical efficacy of contraception. And publicity for birth control often was promotion for Margaret Sanger.

The case examined in this paper, which concerns the publication of The Woman Rebel, illustrates these contradictions. In doing so, it also illuminates confusions in the historical record, confusions that were created by Sanger herself as she molded her image of motivator of and martyr for the birth control movement.

We live in an age in which the majority of adult females practice some form of contraception. Thus, it seems strange to us that, fifty years ago, individuals were jailed for promoting birth control. Odd, too, is the fact that, while today's obscenity cases involve hard core poronography, yesterday's obscenity laws involved the dissemination of birth control advice and devices. Hard to believe, it is nonetheless true.

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In the early years of the twentieth century, contraception was considered to be not only contrary to the laws of God and nature, but to the laws of man as well. Federal and state legislation branded both the information and instruments of contraception as obscene, and provided for the punishment of those who attempted to enlighten the public on the practice of controlled fertility.

The laws of man regarding the pornographic nature of birth control techniques were really the laws of one man, Anthony Comstock. Because of Comstock's activities as head of the Society for the Suppression of Vice, his name became synonomous for repressed sexual behavior and repressive legislation regarding sexual behavior. Comstock had an abhorence of obscene material. Such material, he believed, could fall into the hands of young people, causing them to be degraded and debauched.[1] To prevent this from occurring, Comstock began a one-man crusade to rid America of literary and pictoral representations of sexual activities. The crusade began in New York City in 1872. Here, in one year, Comstock brought about the arrest of 11 dealers and publishers of obscene literature and drawings, and the destruction of plates from 167 pornographic books.[2] But he was not satisfied. Comparing his work to standing at the mouth of a sewer, Comstock realized that there was much more to be done. And it would not be done unless laws were passed that forbid the distribution of obscene material throughout the United States.[3] Thus, he and his backers lobbied Congress for the passage of such a law. They were successful. In 1873, the federal legislature amended Section 211 of the Criminal Code. The new law, which made nonmailable "every obscene, lewd, or lascivious and every filthy book, picture, paper, letter, writing, print, or other publication of an indecent character. . .,"[4] relied heavily on the Hicklin Rule for the determination of what would constitute un-

deliverable material. Enunciated by Lord Chief Justice Cockburn in England in 1868, the Rule defined as obscene, material whose tendency "is to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."[5] Individuals in the United States who attempted to mail pieces producing such a "tendency" would be subject, under Section 211, to a fine of $5,000 and/or five years imprisonment for the first offense.[6] To insure that these provisions were enforced, Comstock pressured Congress to name him post office inspector. As such, he had sole responsibility for the determination and elimination of obscene materials in the mails.[7]

The law that bore Comstock's name and legitimated his mission also forbade the mailing of birth control information and devices. Mary Ware Dennett, a leader of the contraception movement and a woman who would be prosecuted under the law in 1930 for her pamphlet, "The Sex Side of Life," insisted that Comstock had no thought of "penalizing normal birth control information." Rather, she said that he was "simply so bent upon wiping out the shocking commerce in pornographic literature... that he rushed headlong into the question of legislation without due consideration as to the results...."[8] Comstock's own words provided support for Dennett's contention that the law was not aimed at the legitimate dissemination of contraceptive matter. In 1915, he noted that he did not intend the law to prevent the use of such material by the medical professions.[9] This might be hindsight and an attempt to justify the nineteenth century law in terms of twentieth century experiences and criticism. Evidence from Comstock's life and from the time that the law was passed indicates that he did, indeed, desire to suppress all contraceptive devices and information.[10]

Comstock was a deeply religious man. A fundamentalist, he believed in the literal interpretation of the Bible, among whose injunctions is

"go forth and multiply." Further, he believed in the necessity for constant vigilance against temptations to sin, vigilance that required a high degree of discipline.[11] "Can they not use self control," Comstock once railed against those who too often indulged in fornication. "Or must they sink to the level of the beasts?" Fears of pregnancy, God's "natural barriers," were the primary restraints to such animalistic behavior. "If you turn lose [sic] the passions and break down the fear, you bring worse disaster than the war. It would debase sacred things...and diseminate [sic] a greater curse than the plagues and diseases of Europe."[12]

Whatever were Comstock's motivations, it is unquestionably true that the law he promulgated was the first in American history to put barriers in the way of distribution of contraceptive matter. Previous to the amendment of Section 211, newspapers and magazines occasionally discussed birth control, and advertisements for contraceptive devices were carried by reputable publications.[13] The Comstock Law brought an end to this. From 1872, the inter-state distribution of such matter was forbidden. Soon, intra-state dissemination would be illegal as well. Following the federal lead, 22 states enacted "little Comstock Laws." The New York Legislature, for example, passed Section 1142 of the Penal Laws. Titled "Indecent exposure, obscene exhibition, books and prints and bawdy and other disorderly houses," this law carried Comstock's carefully written prohibition against the distribution of birth control information and devices.[14]

Despite the ease with which the federal and state laws were passed, Comstock bills were not universally popular. Some critics noted that the laws were too general, not discriminating between "real pornographic material and helpful educational matters."[15] Others noted the repressive tendencies of such legislation. Morris Ernst, for one, compared laws that squelched the attempt to "explain the mysteries and beauties of sex and

birth" to the historical harrassment of Bruno, Calileo and Copernicus.[16] Another group of critics disliked the "tyrannical power" over the spread of information that the legislation gave to government officials, especially to the Post Office Inspector.[17] "If we concede this power to [the Post Office] ..., we might just as well give to the street car companies and railroads the right to refuse to carry passengers whose ideas they do not like."[18]

Although never refused a ride on a public conveyance because of her unconventional ideas, the woman who made this statement frequently found that they lead to a denial of her access to the mails. The woman was Margaret Sanger. As a leader of the birth control movement and the most outspoken advocate of contraception, she was bound to run afoul of the Comstock laws and the man whose name they bore. The woman he labelled an "abortionist"[19] and Comstock, whom she called "stunted" and "neurotic,"[20] could not have been more unlike. While he was a religious Protestant, she was a anti-religious Catholic. He was self-effacing; she was self-promoting. He considered the feminist cause that she supported "odious" and unnatural, and deplored the radical movements she flirted with as a young woman. With such contrary natures and beliefs, Comstock and Sanger seemed destined to clash.[21]

The first shot fired by Comstock in his battle against the leader of the birth control army was aimed at a socialist newspaper to which Sanger contributed. The Call, in 1912, printed two series of articles written by Sanger. The first, "What Every Mother Should Know," provoked no governmental reaction. The second did. "What Every Girl Should Know," contained a "simple elucidation of the nature of sex and its problems."[22] This, apparently, was simply too much for Comstock. As a result of the Sanger articles, he declared the Call nonmailable. The newspaper printed in its

next issue "'What Every Girl Should Know:' NOTHING! By order of the Post office Department."[23]

What Comstock found objectionable in these articles was the discussion of venereal disease, specifically the use of the words gonorrhea and syphillis. Birth control, its desirability and techniques, was not even covered; Sanger had not reached that point in her essays.[24] Without once touching, then, upon the subject that was the primary cause in her life, Margaret Sanger found herself in violation of the Comstock Law.

A similar situation occurred the second time she was involved with Section 211. The cause here was Sanger's newspaper, The Woman Rebel. And it was Sanger's newspaper. She was its "editor, circulation director, treasurer, bookkeeper."[25] Although Sanger had little financial backing, she was determined to keep her publication going. Her motivation, in part, was the desire to provide the woman reader with information on the "conditions which enslave her and the manner in which she is enslaved--by the machine, by sex convention, by motherhood, by wage slavery, by bourgeois morality, by customs, laws and superstitions."[26] But Sanger also wanted to defy the Comstock Law, "not behind a barricade of law books and legal technicalities but by spreading the information among the workers directly."[27]

The Woman Rebel did defy Section 211, but, like the articles in the Call, it did not do so by imparting birth control information. The first issue of the newspaper (March, 1914) and six out of the next eight editions were suppressed by the Post Office.[28] Yet, these newspapers contained only the most general of discussions on contraception. Topics covered included the cost of a large family, the aims of the Birth Control League, the prevalence of abortion in the United States, and the harmlessness of preventive means of birth control.[29] But if one looks for elucidation as to what exactly those preventive means were, one will not find that infor-

mation in the suppressed issues of The Woman Rebel. What one will find, along with the aforementioned contraceptive generalities, is a strange amalgam of vindictive articles. What Max Eastman called "very conscious extremism and blare of rebellion for its own sake,"[30] these pieces contained attacks on everything from the church to capitalism. Also included in the paper was a philosophic essay, largely derived from the works of Richard Carlisle. The essay noted that, in some circumstances, the assassination of national leaders was justified. Sanger said that she printed this piece "in the name of free speech." With it, she was taunting the government to take action, as the discussion of assassination also was prohibited under Section 211. Besides, she said, the article was "vague, inane, and inocuous."[31]

Legal authorities abviously did not agree with Sanger's benign evaluation of the assassination essay. She did not know this at the time, unsuccessfully having requested from the New York Posmaster the titles of the articles causing the confiscation of The Woman Rebel. But the essay on assassination was included with the birth control pieces in the nine counts of violation of Section 211 for which Sanger was indicted in August, 1914.[32]

We know that Margaret Sanger was arraigned at the old post office building in Manhattan on August 25,[33] but here the record becomes confused. One aspect of the confusion concerns the role of the general circulation press. Sanger apparently believed that the press was against her. She noted that the newspapers failed to give the "official tyranny" involved in the confiscation of The Woman Rebel any publicity.[34] In fact, one reporter who came to Sanger's apartment, where he was the brunt of her daughter's teasing, peavishly suggested that she stay home and "spend thought on disciplining" her family.[35] A supporter backed Sanger's contention

that the press failed to endorse her cause. Newspapers of the time, Frederick Blossom said, could "scarcely find the courage to print the dreadful words 'birth control' tucked away in the center of a news paragraph...."[36] Sanger and Blossom insisted that they could not understand this attitude on the part of the media because The Woman Rebel fight was based on governmental violation of the First Amendment. After all, Sanger and her publication were battling for the same freedom of the press that sustained the unfettered operation of those newspapers that now failed to support her.[37]

Why were the birth control adherents so convinced of media hostility to their cause? Certainly, the press did not embrace Sanger wholeheartedly. Some newspapers, such as the Pittsburgh Sun, finding The Woman Rebel "nauseating."[38] But it must be realized that general circulation publications were in the same position in regard to the illegality of printing articles on birth control as was Sanger's journal. Furthermore, in her personal papers and autobiography, there is little evidence that Sanger intended to wage her battle on First Amendment grounds. Had she gone on trial in 1914, the denial of press freedom probably would not have been one of her major arguments. Material dealing with the two major obscenity cases in which she was a defendant indicates this. The idea of reform of the Comstock laws as they concerned contraception, under the banner of free expression, only briefly crossed Sanger's mind.[39] Despite the problems of the mass press in dealing with the concept and content of The Woman Rebel, despite the weak link between its cause and theirs, there is little reason to believe or evidence to prove Sanger's contention that she was at best ignored, at worst deplored by the nation's newspapers.[40]

A similar problem exists with Sanger's contention that the court and

its officers concerned with The Woman Rebel case were ranged against her. She notes in her autobiography her "childlike" faith in the judicial system. "All I had to do," she said, "was explain to those in power what I was doing and everything would come right."[41] But her "faith" was soon destroyed. The authorites, Sanger insisted, "were anxious to forestall the distribution of birth control knowledge and knew that this could best be done by imprisoning me."[42] To insure that she be incarcerated, the court thwarted her every move, or so she insisted. Sanger's special complaint was about Assistant District Attorney Harold A. Content. She said that this "ferocious young fellow," was attempting, with the connivance of Judge Hazel, to prevent her from having adequate time to prepare her case.[43] Again, there is contradictory evidence. Content seems far from ferocious. In his letters to her he is kind and gentlemanly, trying "at all times to be courteous to you and considerate of your rights."[44]

Further, Content does not appear to be anxious to unnecessarily hurry Sanger's trial. He and Sanger both knew that she violated Section 211. After all, that was one of her motivations for publishing The Woman Rebel. If this were the case, why would Content be so eager to rush the trial, denying Sanger an opportunity to have an adequate defense. It is unlikely that he was. But this is beside the question. Whether Sanger knew, or only imagined that Content was hurrying her off to jail, she used the speed of the trial, the denial of "my right and freedom," as justification for avoiding the whole matter by fleeing to Europe.[45]

Although Sanger does not dwell on the issue, the decision to dramatically postpone the case may have had as much to do with the material for which she was to be prosecuted as with the speed of the prosecution. The indictable articles from The Woman Rebel did not provide information on

birth control techniques, nor did they depict contraceptive devices. Strangely enough, the articles did not even advocate the regulation of fertility. To go to jail for such inocuous pieces would have defeated Sanger's purpose, given little publicity to the real cause and made her a martyr for nothing.

Had Sanger been indicted for distributing a pamphlet she had just written, she no doubt would have been more than happy to go to jail. In fact, in 1915, Sanger had her lawyer, Leonard Abbott, write United States Attorney H. Snowden Marshall suggesting a deal. Sanger would send her pamphlet, knowing it to be nonmailable and subject to indictment, if the District Attorney's office would drop the charges based on The Woman Rebel articles.[46]

Although the deal was not accepted, the pamphlet Sanger proposed to send was unquestionably in violation of the Comstock laws. "Family Limitation" was everything The Woman Rebel pieces were not. It combined socialist and feminist arguments for contraception[47] with pictures and descriptions of birth control devices then available--the douche, vaginal suppository, condom, sponge and pessary. Infinitely more the stuff of martyrdom, more repugnant to Anthony Comstock and more indictable under his law, "Family Limitation," at least in 1915, was not the key to the cell that the government was saving for Margaret Sanger.

If Margaret Sanger was not lucky enough to be imprisoned for "Family Limitation," her husband was. While she was ir Europe, William Sanger, from whom Margaret was estranged maritally as well as geographically, gave away a copy of the pamphlet The recipient was a young man who had come to William Sanger's studio to beg for advice. The young man was an agent of Anthony Comstock. He returned an hour later, accompanied by the old man himself, to arrest William Sanger for distributing obscene literature.[48]

If Margaret thought Judge Hazel was against her, William knew that Judge McInerney was against him. During the trial, the judge called birth control propaganda "a crime not only against the laws of man but against the laws of God." He went on to say, "If some of the women who are going around and advocating equal suffrage would go around and advocate women having children, they would do a greater service."[49] Faced with this sort of judicial attitude, it is not surprising that William Sanger was found guilty and sentenced to 30 days in jail or a $500 fine. He appealed, but to no avail.[50] Declaring, "I would rather be in jail with my conviction than be free at a loss of my manhood and my self-respect," William Sanger was imprisoned for violating Section 211.[51]

As William Sanger argued his case on the basis of his right to free expression, his trial and conviction generated considerable support for birth control as a free speech issue.[52] One would expect, then, that his expatriot wife would be delighted at the public and press endorsement of the cause William Sanger's stand had produced. This was not the case. Margaret was angry at her husband for taking away the martyrdom and expropriating the cause she thought was hers. "Bill had to get mixed up in my work after all," she said with a great deal of resentment, "and of course make it harder for me and all of us!"[53]

To be fair to William Sanger, the only reason he got "mixed up" in his wife's work was that Comstock was attempting to use him to flush Margaret out of hiding. It was Mrs. Sanger that Comstock was really after. The old man did succeed to some extent. With William's arrest, Margaret realized that she needed to return to the States. She was doing extensive and valuable research on contraception in Europe. But she knew that, if she did not go home immediately, she might lose control of the now advancing birth control movement. Comstock, however, was not to taste the triumph

of his mission over that of "the abortionist." Testifying at the trial of William Sanger, Comstock caught cold. He soon developed pneumonia and, in September, 1915, he died.[54]

A month after the death of her nemesis, Margaret Sanger arrived in New York. It was not exactly the return of a conquering heroine. The nation, concerned with the war in Europe, largely ignored her arrival. Her newspaper friends at The Masses took no journalistic notice of her return. Snager's followers had taken over "her" birth control movement and were leading it in a direction she disliked Her family, of course, was pleased to see her. But even here there were problems; William was in jail and her daughter, Peggy, was sick with what would prove to be a fatal attack of pneumonia. On top of all this, Margaret Sanger still had to face the charges stemming from The Woman Rebel articles.[55]

Sanger's friends and advisors urged her to avoid a major clash with the legal authorities. She was ill. Nursing Peggy had injured Margaret physically; the death of the girl had exhausted her emotionally. Sanger really was in no condition to stand trial. Should she do so, her friends said, she would get little of the press coverage she desired to publicize the birth control movement. War news from Europe was pushing information about local happenings off the newspapers' pages. Furthermore, the trail was based on charges only indirectly related to the contraceptive cause. It, therefore, was irrelevant to the case she was attempting to make, that birth control information was not obscene. For all these reasons, the people around Margaret Sanger encouraged her to plead guilty. In this way, she would avoid a judicial confrontation that might be detrimental to the well-being of herself and her movement.[56]

Even her lawyer, Samuel Untermyer, offered the same advice. He

called Sanger and Assistant District Attorney Content into his office. At the meeting, Content said that he would quash the charges and eliminate the jail term if Sanger would plead guilty and write a letter promising not to break the law again. Untermyer thought this was a good solution to Sanger's problems. She did not. Believing that she had distributed nothing obscene, she was determined not to plead guilty and to go on with the trial. She did not care, she said, if this meant jail. Prison did not frighten her. Should no lawyer be willing to go along with this, Sanger would defend herself.[57]

Armed, as she said, with the "valor of faith," Sanger entered the courtroom on November 21, 1915 to face the charges of violating Section 211.[58] The spectator section was filled. Many supporters had come to see a lone woman take on the judicial representatives of the "conservative and reactionary forces" in the nation.[59] Even the press was there. Despite the impending war, Sanger was news. And it was beginning to look to the media that, although the government was still intransigent on the matter on contraceptive information as obscenity, the birth control movement was generating significant public support.[60]

If the spectators were expecting a pyrotechnical display of legal arguments, or the titilating disclosure of the gynecological factors of birth control, they were sadly disappointed on November 21. Judge Clayton, at the request of the prosecuting attorneys, postponed the trial. When two more postponments were granted, Sanger was convinced that the prosecution was indulging in delaying tactics.[61] This was the exact opposite of the strategy Sanger claimed the district attorney's office was using against her when The Woman Rebel case first came up for adjudication in 1914. Then, they were attempting to hurry her to trial. Now,

they were trying to retard the completion of the case, presenting "the anomoly of a prosecutor loath to prosecute and a defendant anxious to be tried."[62]

As, with the first phase of The Woman Rebel case, there is contradictory evidence on this point. In a February 15, 1916 letter to Sanger, Assistant District Attorney Content noted that not all of the postponments were granted at the behest of the prosecution. Sanger, he said, "retained attorneys just for the purpose of securing adjournments." He reminded her that the case could have been tried over a year before had Sanger "not left the jurisdiction in violation of the trust that Judge Hazel imposed in you when he released you on your own recognizance." Exasperated, Content said, "You seem to think that your case is the only one this office has to try." The attorney then told Sanger that her case probably would come to trial the following Monday, February 18.[63]

With this limited guarantee, Sanger began to prepare her case in earnest. We know as little of her defense as we know of the prosecution's tactics. What evidence there is indicates that she did not intend to argue on free speech grounds. Rather, her defense centered around the harm that a lack of birth control information was causing the nation's women. Should the facts be known, and she was going to make them known in open court, "the Government would not wilfully sic condemn millions of women to death, misery, or abortion which left them physically damaged and spiritually crippled."[64] She was going to use the trial as a public forum to arouse the nation about birth control. Serving, figuratively, as counsel for "the poor mute mothers who are denied their human rights,"[65] Sanger could create a more dramatic case and one that better promoted herself and her cause, than a defense based on the constitutionally safer, but less histrionic grounds of free expression.

We will never know conclusively whether this was her defense, or her strategy; Sanger was not tried, not given an opportunity to speak. On February 18, the district attorney's office issued a nolle prosequi, a formal notification of unwillingness to prosecute.[66] There are many probable reasons for the government's action. The defendant was not an habitual offender, not a "disorderly person," the charge was an old one,[67] and the trial had generated unfavorable publicity for the courts. But, more than this, the prosecution had no desire to grant Sanger's wish for self-sacrifice. "We were determined that Mrs. Sanger shouldn't be a martyr if we could help it," Content explained.[68]

Sanger lost something more than martyrdom as a result of the government's action; she lost the battle to publicize information on the desirability of and techniques for birth control. In this battle, she was following the precedent set by Annie Besant in England almost 40 years before. Besant, along with Charles Bradlaugh, was tried in 1877 for violating the British version of the Comstock Law by distributing a birth control pamphlet, "The Fruits of Philosophy." Written by an American physician, Dr. Charles Knowlton, the pamphlet had been printed and sold openly in England for 40 years. In 1876, upon the death of the original publisher, Bradlaugh convinced Charles Watts to print and distribute the Knowlton work. Watts was arrested for selling this "obscene literature" on January 8, 1877. Deciding that the pamphlet was indefensible, Watts pleaded guilty to the charges. This angered Bradlaugh. "I hold the work to be defensible," he said, "and I deny the right of anyone to interfere with the full and free discussion of social questions affecting the happiness of the nation." Bradlaugh, joined by Besant, then determined to republish the pamphlet to test the right of publication.[69]

There are several parallels between the Besant-Bradlaugh case and that

of Margaret Sanger. Like Sanger's efforts with The Woman Rebel, Besant and Bradlaugh had given out their publication with the express purpose of defying the obscenity statutes. Also, like Sanger, they planned on using the trial to advance the spread of contraceptive literature and the growth of the birth control movement.

Besant and Bradlaugh, however, were more sucessful than their would-be American counterpart.[70] Not only was their conviction overturned on a technicality, but their purpose was achieved. The British obsenity laws began to lose their effectiveness. Furthermore, valuable birth control publicity was spread. Prior to the arrest of Besant and Bradlaugh, "The Fruits of Philosophy" had been selling at a rate of 700 copies a year. In the three months between their arrest and trial, 125,000 copies of the book were sold. Membership in the organization of contraception advocates also began to increase. And, the English birth rate began to plunge after the trial.[72] It is dangerous to make a causal link between the case and the slowing of population growth, but its is unquestionably true that the trial did generate publicity for the contraceptive cause. Of this, Besant and Bradlaugh said in the introduction to the transcript of their trial:

> The accounts of the trial which have appeared in the daily and weekly papers have brought to the knowledge of thousands a great social question of whose existence they had no idea before this prosecution took place. Once more a cause has triumphed by the fall of its defenders. Once more a new truth has been spread everywhere by its persecutors and has gained a hearing from the dock that it could not have won from the platform.[73]

The other major difference between the Sanger and the Besant-Bradlaugh cases is that the English birth control advocates did use the free speech argument in their trial. The struggle for an unfettered press was "one of the marks" of the Freethought party which Besant and Bradlaugh lead.[74] In their trial, therefore, they made every effort to differentiate between

the illegitimate attempt of government to limit the spread of contraceptive information and the legitimate prohibition on distributing pornographic literature. That prohibition was a proper exercise of a polity that operated under free speech laws which excluded obscene materials from its list of protected utterances.[75] Further, they saw their victory as the "triumph of a Free Press." "The discussion of a question of ethics, of social science, of medicine...," said Besant and Bradlaugh, "has always been the medium of progress and the right to it must be won at all hazards."[76]

Margaret Sanger's case certainly was not the American equivalent of the Besant-Bradlaugh trial, nor was it the "victory and vindication" that she shouted it was outside the courtroom on February 18.[77] But The Woman Rebel case did have some positive effects. For the movement, Sanger's "gallant zeal" convinced a group of supporters to form the first organization promoting contraception, the National Birth Control League.[78] For the public, birth control was made a topic of discussion and concern. And, for Margaret Sanger, the case made her a nationally known figure.[79] and bolstered her determination to continue to defy the Comstock laws. As Sanger noted:

> Against the State, against the Church, against the silence of the medical profession, against the whole machinery of dead institutions of the past, the women of today arises.
>
> She no longer pleads. She no longer implores. She no longer petitions. She ishere to assert herself, to take back those rights which were formerly hers and hers alone.
>
> If she must break the law to establish her right to voluntary motherhood, then the law must be broken.[80]

Broken by Sanger and her followers time and time again, the laws preventing the spread of contraceptive information eventually would be defeated. Sanger's place in those efforts was controversial then and is confused now. The records she left behind are contradictory. The legacy

she left behind is not. Although we have a long way to go to settle the problems of contraception and of obscenity, we have come a long way in the last 60 years. No longer is birth control and the bawdy house linked in the public mind; no longer are diaphrams and dirty pictures classed together. No longer is the dissemination of contraceptive advice and devices prohibited by law. And this certainly is the legacy of Margaret Sanger.

NOTES

1. Heywood Broun and Margaret Leach, Anthony Comstock: Roundsman of the Lord, New York: Albert and Charles Bone, 1927, pp. 78-81.

2. Mary Alden Hopkins, "Birth Control and Public Morals: An Interview with Anthony Comstock," Harper's Weekly, May 22, 1915, p. 490.

3. Ibid.

4. Mary Ware Dennett, Who's Obscene, New York: Vanguard, 1930, p. xix.

5. James C. N. Paul and Murray L. Schwartz, Federal Censorship: Obscenity in the Mail, New York: The Free Press of Glencoe, 1961, p. 16

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7. Hopkins, "Birth Control and Public Morals," p. 489.

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41. Margaret Sanger, Autobiography, p. 115.

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44. Harold A. Content to Margaret Sanger, October 13, 1915, Margaret Sanger Papers, Library of Congress.

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47. One socilist argument was that the working class could pressure the capitalists by "refusing to supply the market with children to be explited, by refusing to populate the earth with salves." Feminist arguments centered around the woman's right to control her own body. When, said Sanger, the sexual act is not "desired on the part of woman and she has no response, it should not take place." Margaret Sanger,"Family Limiatation," privately published, 1914, pp. 3-6.

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